

STATE OF MICHIGAN
COURT OF APPEALS

KATHLEEN M. BUCKNER and SALVATORE
D. PALOMBO,

UNPUBLISHED
June 22, 2006

Plaintiffs-Appellants,

v

CITY OF CENTERLINE,

No. 267652
Macomb Circuit Court
LC No. 2005-003718-CZ

Defendant-Appellee.

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the circuit court's order granting summary disposition to defendant. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

In May 2006, defendant's City Council, in response to an anticipated vacancy for the position of City Attorney, voted "to retain Mr. David Viviano as the City Attorney for the City of Center Line at an hourly rate of \$100 per hour until City Council decides otherwise . . ." (Defendant's exhibit D, p 2).

At the time in question, defendant's code of ordinances included the following provision:

Any expenditure or any contract obligating the city, in an amount over \$1,000.00, shall be made or awarded only on written contract and approved by the city council. Notice soliciting sealed competitive bids shall be published Such notice shall briefly state the specifications of the . . . service . . . required . . . , and shall further state the time and place for filing and opening of bids and the general terms and conditions of the award of the contract. . . . [Center Line Ordinances, § 2-342 (reproduced by plaintiffs as Exhibit B, and by defendant as Exhibit G).]

The code also provides an avenue for avoiding the bidding procedure:

If the city council shall determine by a majority vote of the members present at any regular or special meeting that no advantage would result to the city from competitive bidding relative to a particular purchase or sale, the purchasing

agent shall not be required to comply with the provisions of this division requiring competitive bidding. [*Id.*, § 2-352.]

Asserting that the vote to engage Mr. Viviano was interim in nature, and that the City Council was obliged to open the permanent position to competitive bids, or else vote specifically to avoid the bidding process, plaintiff Buckner, a member of the City Council, brought an action for mandamus or superintending control, seeking to compel such action on the Council's part.

Defendant moved for summary disposition. Before the motion was heard, plaintiff Palombo, an attorney interested in the City Attorney position, joined the action. The trial court granted defendant's motion, on the grounds that neither plaintiff had standing to bring the action, and that the court could not in any event act as a legislative body superior to defendant's City Council.

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Whether a party has standing to bring an action likewise involves a question of law, subject to review de novo. *In re KH*, 469 Mich 621, 627-628; 677 NW2d 800 (2004).

For a plaintiff to have standing to press a civil claim, that plaintiff must show an actual or imminent, concrete and particularized, invasion of a legally protected interest. *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 739-740; 629 NW2d 900 (2001), citing *Lujan v Defenders of Wildlife*, 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1992).

Plaintiffs assert that Palombo has standing on the grounds that he is both a taxpayer and a practicing attorney who has shown an interest in applying for the position in question. But "taxpayer standing is contingent upon a showing of a 'threat that he will sustain substantial injury or suffer loss or damage as a taxpayer, through increased taxation and the consequences thereof.'" *Killeen v Wayne Co Rd Comm*, 137 Mich App 178, 190; 357 NW2d 851 (1984), quoting *Menendez v Detroit*, 337 Mich 476, 482; 60 NW2d 319 (1953). Accordingly, "The plaintiff must allege with particularity how the alleged illegal act will result in such injury." *Killeen, supra*. Because plaintiffs do not show that Palombo's taxpayer-based concerns over how defendant's City Council has filled the position of City Attorney are other than of a general and speculative nature, that status does not confer standing in this instance. *Id.*

Nor does a Palombo's status as frustrated bidder.¹ Systems of bidding for governmental contracts exist to benefit the general public, not prospective bidders. *Talbot Paving Co v Detroit*, 109 Mich 657, 660, 662; 67 NW 979 (1896). See also *Detroit v Wayne Circuit Judge*, 128 Mich 438, 439; 87 NW 376 (1901) ("As a bidder, the complainant has no standing."). In governmental bidding situations, injury in the form of frustrated contract expectations is not actionable by an unsuccessful bidder, because the bidder is but an incidental beneficiary of a scheme that exists mainly in furtherance of public rights or advantage. See *Talbot, supra* at 660-661.

¹ For purposes of this opinion, we are assuming, but not deciding, that filling the position of City Attorney invokes the duty to engage the bidding process as set forth in defendant's ordinances.

Plaintiff Buckner likewise fails to show concrete and particularized injury in connection with the City Council's actions. In an action for breach of statutory duties, "the party bringing it must show that he had an interest in the performance of the duty, and that the duty was imposed for his benefit." *Id.* at 566, quoting *Strong v Campbell*, 11 Barb 135, 138 (NY S Ct, 1851). The obvious and direct purpose of the system of competitive bidding, lax enforcement of which plaintiff Buckner complains, is to give the public the benefit of paying competitive prices for needed goods or services. To the extent that plaintiff Buckner benefits from that scheme as a member of defendant's City Council, those benefits are incidental to that major public benefit, and thus not actionable by her. *Id.* For these reasons, the trial court correctly held that Palombo lacks standing in this instance.

Plaintiffs argue that Buckner is exposed to lawsuits over defendant's unauthorized actions, but cite no authority for the proposition that an individual city council member faces personal liability of that sort. Plaintiffs further complain that Buckner has suffered negative publicity in the matter, but cite no authority for the proposition that such natural consequences of seeking and obtaining public office as public criticism can constitute actionable injury.

However, "public officials have standing to sue commensurate with their public duties and trusts. *Killeen, supra* at 189-190. Plaintiffs assert that Buckner, as an elected member of the City Council, has a duty to ensure that it acts in a lawful manner. But Buckner's duties as a member of that body involve entertaining petitions, making motions, and casting votes, not policing the Council as a whole, or coercing it to entertain certain issues, or vote in certain ways. Because Buckner, as but one voice in that legislative body, does not have administrative responsibility for defendant's expenditures of funds, or handling of legal affairs, her official duties do not confer standing to sue the City on behalf of the general public.

Because we agree with the trial court that neither plaintiff in this case had standing to maintain this cause of action, we need not address the trial court's conclusion that it lacked the authority to intrude into the City Council's business as plaintiffs requested.

Affirmed.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette